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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HILDA S.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D053729

(San Diego County
Super. Ct. No. J516931)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. Yvonne E. Campos, Judge. Petition denied.

Hilda S. seeks writ review of orders terminating her reunification services and setting a Welfare and Institution Code¹ section 366.26 hearing regarding her son, N.N. She contends the court erred by issuing these orders because she was participating regularly in reunification services and had made substantive progress with the provisions of her case plan. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On December 6, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of infant N.N., alleging he and Hilda had tested positive for methamphetamine at the time of his birth and Hilda admitted using marijuana during her pregnancy.

The social worker reported Hilda had a seven-year history of methamphetamine use. Hilda told the hospital social worker she did not have a drug problem and therefore did not need to participate in drug treatment. She said a friend may have sprinkled methamphetamine on the marijuana she smoked before giving birth, she drank alcohol most weekends and had been using methamphetamine off and on since 2004. She said she was not ready to tell her parents about N.N.'s birth because they were very strict, and having a child out of wedlock was inconsistent with their Catholic faith.

At a January 14, 2008, hearing, the court found the allegations of the petition to be true. It referred Hilda to the Substance Abuse Recovery Management System (SARMS) for an evaluation. On January 31, 2008, the court found N.N. to be a dependent child of

¹ Statutory references are to the Welfare and Institutions Code.

the court, continued his placement with the paternal grandmother, and ordered Hilda to comply with the provisions of her case plan, which included counseling, parenting education, a psychological evaluation and substance abuse treatment.

In July 2008 the social worker reported Hilda had not informed her parents about N.N.'s birth because she believed they would disown her if they knew about him. Her drug treatment provider said Hilda did not at first do well in her treatment program, but then began attending regularly, having negative drug tests and participating in group sessions. Hilda told the social worker she had nearly completed a parenting program. At the time of the report she had not begun therapy, but was on a therapist's waiting list. She was visiting N.N. every day.

At the six-month review hearing on September 12, 2008, Hilda's substance abuse treatment provider testified Hilda began minimal participation in February, by March her participation had increased, and since that time she had been attending 12-step meetings, testing regularly and engaging in group discussions. The treatment provider reported Hilda had relapsed in July, testing positive for methamphetamine on July 3 and July 21, but since then she had continued to work actively on her recovery and had eight negative drug tests.

The social worker testified she had received a referral of a domestic violence incident between Hilda and N.N.'s father. The social worker also was concerned about Hilda's drug use in July and the fact she had still not informed her parents about N.N. She said Hilda had recently begun therapy.

The court found the Agency had offered reasonable services, but Hilda had made only minimal progress and returning N.N. to her custody would create a substantial risk of detriment to him. It terminated services and set a section 366.26 hearing.

Hilda petitions for review of the court's orders. (§ 366.26, subd. (e); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

Hilda contends the court erred by terminating her reunification services and setting a section 366.26 hearing. She argues she participated regularly in reunification services and made substantive progress with the provisions of her case plan.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Under section 366.21, subdivision (e), at the six-month review hearing for a child who was under the age of three when removed from his or her parents, the court may terminate services and set a section 366.26 hearing if the court finds by clear and convincing evidence that the parent has not participated regularly in reunification

services or made substantive progress in treatment. Here, substantial evidence supports the finding.

Hilda's reunification services plan included individual therapy, parenting education, substance abuse treatment and a psychological evaluation if required by her therapist.

Hilda completed a parenting class during the review period. The court referred her to SARMS on January 14, 2008, and the SARMS program referred her to an outpatient program. On January 31 the court ordered her to comply with her case plan. Hilda enrolled in an outpatient substance abuse program on February 6, but in March she was in danger of being dropped from the program because she was often late and did not participate. Instead of being discharged from the program, however, she was allowed to remain but was required to sign a contract to ensure she would comply with program requirements. By May Hilda was participating regularly and had almost five months of negative drug tests. Unfortunately, in July she relapsed, twice testing positive for methamphetamine use. At the time of the six-month review hearing, she had been sober for only six weeks. As the court noted, her relapse was of concern because it showed a lack of compliance with her drug treatment program and she did not disclose the fact she was using drugs despite going to group meetings, where she would have had the opportunity to do so.

Importantly, Hilda did not begin individual therapy until several months after it was ordered as a part of her case plan. The social worker provided her with a list of therapists in December 2007, and again in June 2008, because Hilda had not yet started

therapy. However, it was another two months before she started therapy, and by the review hearing she had attended only a few sessions. Substantial evidence supports a finding she did not show substantive progress with this component of her case plan.

The court noted Hilda appeared to have no support system in place, in part because she feared disclosing the fact of N.N.'s birth to her parents. The court observed not being able to tell her parents was a source of stress to Hilda, which she had not been able to address in therapy because she had such a late start with this part of her services plan.

Considering Hilda's drug relapse in July and her minimal participation in therapy, she has not shown a lack of substantial evidence to support the court's findings she had not made substantive progress with the components of her case plan or that she would not be able to complete her services requirements by the 12-month date.

DISPOSITION

The petition is denied.

MCDONALD, Acting P. J.

WE CONCUR:

MCINTYRE, J.

AARON, J.